R.I. House Judiciary Committee
Testimony for H5171
February 26, 2019

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Dear Chairman Craven and Members of the Committee:

The history of child sex abuse within the Catholic Church and the reminders of our past failures to protect young people are occasions for pain that call for justice and healing.

As a priest and a Catholic, I wish I could turn back the clock on the terrible things that have happened in the past, but I can't.

I am somewhat heartened, however, by the knowledge that over the last 25 years the Diocese of Providence has established a commitment to safety, justice and healing that seeks to atone for the past and protect our young people in the future.

For more than a quarter century, the Diocese has been a leader in the United States in implementing programs and policies to prevent childhood sex abuse. Meanwhile, it continues to work vigilantly to ensure our Church is safe for everyone, especially for children and youth, while efforts continue to reach out to victims and their families and provide the resources they need.

Addressing this issue has been solely motivated by the fact that it is the right thing to do. The Rhode Island Catholic Conference, however, expresses serious concern regarding the proposed legislation because it complicates and impedes the administration of justice and does little to protect victims. In fact, this bill as written could make the pursuit of justice and healing more difficult, not less.

Statutes of limitations are meant to promote justice by preventing surprises through the revival of claims that have been allowed to lie dormant. Furthermore, statutes of limitations promote fairness in other ways, too. They prevent the raising of old claims in which evidence is lost, memories change and witnesses disappear and guard against false or misrepresented claims. This bill would be unprecedented in Rhode Island in that there are no other civil claims in our laws without a statute of limitations. The only acts which do not carry a statute of limitations are criminal acts which carry life imprisonment. Further, this proposed legislation could negate efforts to address the issue justly and fairly by raising serious constitutional issues that make the bill vulnerable to a court challenge. This serious flaw is addressed in more detail in the addendum to my testimony.

The Diocese of Providence has in place one of the strongest sexual abuse prevention and protection programs in the country. Over 25 years ago, the diocese created its Office of Education and Compliance to investigate claims and oversee safe environment policies in all its many parishes, schools and agencies. This office is currently headed by a retired veteran of the Rhode Island State Police with 23 years' experience on the force.

Establishing protocols for protections have been continually strengthened over the years. These steps include the voluntarily establishment of protocols with the Rhode Island Attorney General's Office. This protocol establishes the reporting of all claims of sexual abuse of a minor to the Office of the R.I. Attorney General. This is in addition to the long-standing protocol of reporting all allegations of abuse, regardless of how credible, to law enforcement agencies. This commitment to the protection of children and enhanced transparency continue to be a priority for the Catholic Church in Rhode Island.

The Church is deeply and wholeheartedly committed to protecting children from the crime of sexual abuse, providing justice and healing for innocent and suffering victims, and ensuring measures to prevent sexual abuse. The Rhode Island Catholic Conference must express its serious reservations regarding this piece of legislation, however, as it fails to serve the interests of justice and ensure the protection of all victims in a way that is legally sound.

We would respectfully ask that the General Assembly address the serious flaws in this legislation and then pass a bill.

This memorandum analyzes the effect of H 5171 (the "Bill") on existing law, the public policy implications of the Bill, and the constitutional issues that would arise from the retroactive elimination of the statute of limitations for civil claims of negligence relating to instances of childhood sexual abuse.

Legislative History of Civil Statute of Limitations for Childhood Sexual Abuse

The statute of limitations for personal injury in Rhode Island is three (3) years from the date a cause of action accrues. See R.I. Gen. Laws § 9-1-14(b). Pursuant to R.I. Gen. Laws § 9-1-19, this period is tolled ("delayed") until a child reaches the age of 18. Courts, in cases of medical malpractice, products liability and environmental torts, have judicially created and applied a "discovery rule" as another measure to toll statutes of limitations. A so-called "discovery" rule means that the running of the statute of limitations "clock" is essentially paused if the plaintiff did not actually discover that he or she was harmed -- and could not reasonably have made that discovery right away. In those cases, the "clock" doesn't start running until the harm is actually (or should have reasonably been) discovered.

In 1991, in Doe v. LaBrosse, 588 A2d 605 (R.I. 1991), a case involving alleged sexual abuse by a father against his daughters, the Rhode Island Supreme Court declined to apply a discovery rule to civil childhood sexual abuse cases. Following that decision, the General Assembly enacted R.I. Gen. Laws § 9-1-51 (the statute the Bill seeks to amend) to create, by statute, a *limited discovery rule* for childhood sexual abuse claims. Rhode Island General Laws § 9-1-51 applies to *perpetrator defendants* in childhood sexual abuse cases. Rhode Island General Laws § 9-1-51 *has no application* to claims against non-perpetrator defendants.

As originally enacted in 1992, the statute of limitations for claims against perpetrator defendants pursuant to R.I. Gen. Laws § 9-1-51 was "three (3) years of the act alleged to have caused the injury or condition, or three (3) years of the time the victim discovered or reasonably

should have discovered that the injury or condition was caused by the act, whichever period expires later." The following year, in 1993, the General Assembly amended R.I. Gen. Laws § 9-1-51, to its current state, to extend the limitations period for claims *against perpetrator defendants* to "seven (7) years of the act alleged to have caused the injury or condition, or seven (7) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act, whichever period expires later."

The interplay between R.I. Gen. Laws § 9-1-51 (for perpetrators) and R.I. Gen. Laws § 9-1-14 (for non-perpetrators), in place and working in tandem for over 25 years, is a carefully-calibrated statutory structure designed to apportion a mixture of public policy equities among (i) actual perpetrators with the greatest culpability for harm caused because they exercised intentional, affirmative conduct against victims, (ii) those non-perpetrators who are alleged to have committed unintentional negligence, (iii) victims' rights to pursue claims, (iv) defendants' rights to be free from stale claims, and (v) the reliability and admissibility of recovered memories.

The Provisions of H 5171 and Proposed Changes to R.I. Gen. Laws § 9-1-51

The Bill reapportions the above-stated public policy equities in the following ways: (1) the Bill removes any distinction in culpability between perpetrators and non-perpetrators – treating the perpetrator abuser the same as someone who may have committed unintentional negligence; (2) the Bill establishes a three-year retroactive revival during which previously barred civil claims may be brought, however long ago those claims may have arisen; (3) prospectively, the Bill permits the filing of civil claims thirty-five years after a victim reaches the age of majority – 53 years old, but the Bill also stacks a seven year discovery rule on top of the elongated statute of limitations which operates to extend the limitations period indefinitely depending on when a victim is deemed to have discovered distant memories of the injury; and (4) the Bill applies the newly proposed limitations periods in R.I. Gen. Laws § 9-1-51 for bringing claims against the state,

political subdivisions, cities or towns under R.I. Gen. Laws § 9-1-25, but the Bill fails to treat public and private institutions similarly in other important ways.

The Bill does not effect any changes in the law that could reasonably be thought to assist in the prevention of childhood sexual abuse. The retroactive revival of old claims has no effect on future preventive measures; and, the extraordinary elongation of the statute of limitations on a prospective basis discourages the prompt filing of claims, thereby reducing their deterrent effect on future conduct. The Bill is not targeted at abusers or abuse, but at expanding opportunities to file monetary lawsuits against a limited set of third parties who may have served as employers or for whom an assailant may have volunteered.

Statutes of Limitations: Fairness and Closure

Good legal systems seek accurate adjudications. Statutes of limitations promote this goal by playing an important role in ensuring fairness in the justice system. Courts, including both the United States Supreme Court and the Rhode Island Supreme Court, have affirmed these principles. See Wood v. Carpenter, 101 U.S. 135,139 (1879) ("Statutes of limitations are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence."); United States v. Kubrick, 444 U.S. 111, 117 (1979) ("Statutes of limitation exist to "protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise."); Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 181 (R.I. 2008) ("Statutes of limitations are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.") (quoting the United States Supreme Court in Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 348-49 (1944)).

Statutes of limitations are designed to enable claims to be investigated and decided fairly, while facts are fresh, memories are vivid, and relevant evidence is still available. Limitations periods also guarantee that judges and juries will not be so far removed in time from circumstances surrounding a case that they cannot interpret the evidence in light of those circumstances.

Statutes of Limitations promote fairness and closure by:

(i) preventing stale claims in which evidence is lost, memories change and witnesses disappear;

(ii) encouraging plaintiffs to assert claims promptly;

(iii) guarding against false claims;

(iv) carrying out a strong public policy interest in promoting closure, allowing defendants an ability to plan for the future without uncertainty inherent in potential liability; and

(v) ensuring that long-past actions will not be judged by contemporary standards.

In addition to these principles undergirding fair and accurate adjudications, former Rhode Island Chief Justice Joseph Weisberger summed up balancing of an individual's right to seek redress, the need for a defendant to be allowed a fair defense, and for courts and society to have finality: "The right to be free of stale claims in time comes to prevail over the right to prosecute them." Anthony v. Abbott Laboratories, 490 A.2d 43, 49 (R.I. 1985); see also Farris v. Compton, 652 A.2d 49, 57 (D.C. 1994) ("Because time erases evidence, it becomes at some juncture fundamentally unfair to require a defendant to respond to allegations so stale that he cannot possibly marshal an effective defense to them.").

These long-recognized principles which sustain a fair judicial system are severely undermined by retroactive removal of statutes of limitations or exceptionally long statutes of limitation.

The Bill unconstitutionally revives expired claims.

It is difficult to conceive of a more complete repudiation of the prevailing principles of statutes of limitations than the retroactive authorization of claims that have been barred for as many as three, four, five or more decades, which is what this Bill proposes. The proposal is so extreme that it is not surprising that the Rhode Island Supreme Court has already concluded that such application would be violative of due process. In the 1996 amendments to the Rhode Island Constitution, defendants were vested with substantive due process rights to be immune from time-barred claims. The Rhode Island Supreme Court has held that the Rhode Island Constitution precludes legislation with retroactive features that would revive already timed-barred claims. Kelly v. Marcantonio, 678 A.2d 873 (R.I. 1996). Interestingly, Kelly was decided in the context of R.I. Gen. Laws § 9-1-51 – the exact statute at issue here.

The Bill discourages plaintiffs from asserting claims promptly.

Statutes of limitations encourage plaintiffs to decide in a timely fashion whether they wish to present a claim, and prevent plaintiffs from bringing forth claims long after the injury occurred. "Statutes of limitations do not condemn sleeping [on one's rights], they condemn waking up to assert a claim long after the injury." Patrick J. Kelley, The Discovery Rule for Personal Injury Statutes of Limitations: Reflections on the British Experience, 24 WAYNE L. Rev. 1641, 1645 (1978). Statutes of limitations "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost." Railroad Telegraphers, 321 U.S. at 348-49.

The Bill discourages the prompt filing of claims, and may encourage plaintiffs to intentionally delay claims until exculpatory evidence has spoiled or witnesses have died. When combined with Rhode Island's 12% prejudgment interest statute, R.I. Gen Laws § 9-21-10, a very

lucrative incentive to delay claims is created – especially when those stale claims are more difficult to defend over time.

Discouraging the prompt filing of claims also undermines one of the broader societal purposes of tort law. Shorter limitations periods encourage individuals to bring their claims – and stimulate corrective measures – in a timely fashion. Enacting incentives to delay claims can leave predators undetected.

The Bill removes guards against spurious claims.

Statutes of limitations provide a barrier of protection against spurious claims. When evidence is stale or lost altogether, and the truth is hard to ascertain, fraudulent and spurious claims will more frequently find their way into the court system. "Statutes of limitations . . . assist in preventing the assertion of fraudulent claims." Wilson v. Johns-Manville Sales Corp., 684 F.2d 111, 119 n. 40 (D.C. Cir. 1982). "Old claims also are more likely to be spurious than new ones." Farris v. Compton, 652 A.2d 49, 58 (quoting Tyson v. Tyson, 727 P.2d 226, 228 (Wash. 1986)).

When the quality of proof declines, the amount of fraud increases. Our entire economic and legal system of contracts requires documents to be written to remain enforceable – the Statute of Frauds. Statutes of limitations of appropriate length carry out this purpose in tort law.

Some have said that H 5171 will not create a problem: the plaintiff has the burden of proof, and the jury is perfectly capable of sorting things out. However, the law has always recognized that juries are fallible. In fact, the law of evidence exists in part to exclude from juries evidence the reliability of which a jury cannot fairly assess. The law strives to make decision-making by juries more rational and predictable rather than less. The Bill would have the opposite result by confronting juries with cases they should not be required to decide. They will find it very difficult to decide those cases fairly when the evidence and testimony is incomplete, uncertain or

unavailable, or when standards of behavior and social values and relationships have changed; not to mention the costs borne to defend the spurious claims.

Achieving justice is not merely a matter of "opening the courthouse door." It is also a matter of what happens when you're inside the courtroom.

The Bill presumptively validates repressed memory.

It is not only the fraudulent or spurious claim that is of concern here – it is also the imagined claim that is the product of faulty memory or other psychological problems. Rhode Island courts have struggled with the admissibility and reliability of recovered memory. See State v. Quattrochi, 681 A.2d 879 (R.I. 1996) ("Perhaps no area of the law has been more productive of controversy than that of the reliability and admissibility of testimony, expert and otherwise, relating to repressed recollection.") (a criminal case involving adult sexual assault). For this reason, Rhode Island has always resisted an expansion of the discovery rule in cases involving this subject matter. See Doe v. LaBrosse, 588 A2d 605 (R.I. 1991), Kelly v. Marcantonio, 678 A.2d 873 (R.I. 1996). The challenge for courts in applying a discovery rule following the exhaustion of a 35-year limitations period will not get any easier.

Some have pointed to Massachusetts – the only state in the country to stack a discovery rule onto a 35-year statute of limitations (the majority of states have a limitations period of seven years or less), but it is also important to note that Massachusetts law provides for a $20,000 limitation on tort liability for non-profit organizations. Mass. Gen. Laws ch. 231, § 85K. So, while Massachusetts provides victims an extended limitations period to bring claims, many defendants – like private schools, religious institutions and non-profit community organizations like the YMCA or Boy Scouts – have limited liability. That was a trade off the Massachusetts legislature made, but it is absent from what is contained in the Bill.

The Bill Unfairly Invites Courts to Apply Today's Standards to Yesterday's Conduct

The problems go well beyond difficulties of adducing necessary evidence. There is inherent unfairness and risk of error in asking a jury in 2019 to decide whether actions taken in 1957 or 1967 reflected a lack of due care (or for that matter asking a 2054 jury to assess today's behavior). Juries are asked to apply their common sense and experience in adjudicating claims of negligence, and jurors are the product of their time. The understanding of child abuse in the mid-1960s was not remotely comparable to the understanding of the problem today. Professional psychiatrists viewed the problem differently, as no doubt would have jurors. It would have been one thing to ask a jury in the mid-1960s to apply their reason and experience in considering whether contemporaneous actions in this area were negligent; it would be quite another to ask a jury in 2019 to second-guess decisions made over a half-century ago. It is by no means an exaggeration to say that many of the jurors who would be asked to hear such a case today would not have been born at the time of the decisions and events they would be asked to judge.

Perpetrators and Non-Perpetrators Are Not Equally Culpable

In creating R.I. Gen. Laws § 9-1-51 – which applies only to perpetrators – it was acknowledged and recognized that perpetrators of abuse have a heightened level of culpability for their conduct. Perpetrators exercise intentional, affirmative conduct against victims. Negligence is committed unintentionally. The Bill seeks to eviscerate that distinction, and equates vastly divergent responsibility levels. By doing so, it applies the criminal intent of an abuser on par with a party who may have committed negligence.

Criminal Punishments Are Available Under Existing Law

Many have stated that the Bill is needed to "punish perpetrators" of abuse. However, as discussed, the Bill is focused on expanding opportunities to file monetary suits against non-perpetrators. In Rhode Island, criminal laws are in place to pursue perpetrators of abuse without

regard to statutes of limitations. While some states have restrictive criminal statutes of limitations for childhood sexual abuse, Rhode Island has no criminal statute of limitations for first and second degree child molestation. Rhode Island General Laws § 12-12-17 sets forth the statutes of limitations for the crimes below (each particular statutory offense is in parentheses).

No statute of limitations for these criminal offenses:

Rape/First-degree sexual assault (R.I. Gen. Laws § 11-37-2)

First-degree child molestation sexual assault (R.I. Gen. Laws § 11-37-8.1)

Second-degree child molestation sexual assault (R.I. Gen. Laws § 11-37-8.3)

However, there are several other sex-related crimes which carry limitations periods far less than what the Bill proposes for negligence:

The statute of limitations for these criminal offenses is ten (10) years:

Human trafficking (R.I. Gen Laws § 11-67.1-3)

Forced labor (R.I. Gen Laws § 11-67.1-4)

Sexual servitude (R.I. Gen Laws § 11-67.1-5)

Patronizing a victim of sexual servitude (R.I. Gen Laws § 11-67.1-6)

Patronizing a minor for commercial sexual activity (R.I. Gen Laws § 11-67.1-7)

The statute of limitations for other criminal offenses is three (3) years:

Third degree sexual assault (statutory rape, victim age 15) (R.I. Gen. Laws § 11-37-6)

Assault with intent to commit first-degree sexual assault (R.I. Gen. Laws § 11-37-8)

Indecent solicitation of a child (R.I. Gen. Laws § 11-37-8.8)

Knowing failure to report a sexual assault or attempted sexual assault (R.I. Gen. Laws §§ 11-37-3.1, 11-37-3.3)

Again, crimes are committed on purpose. Negligence is an unintentional error. It seems fundamentally unfair to have limitations periods for criminal activity *shorter* than one for alleged negligent behavior.

Victims Deserve Similar Avenues of Redress Against Public and Private Entities

All victims should have the same means of redress under the law. It should not matter in what context or forum a child was abused. Whether a child was harmed in a public school, a private school, at a religious institution or under governmental custody, the time periods to assert claims *and* the potential levels of recovery should be uniform. Otherwise, an unfair and discriminatory statutory regime operates to created two classes of victims.

A study commissioned by the U.S. Department of Education shows that public schools are the most prevalent location for incidence of child sexual abuse. See U.S. Department of Education, Office of Undersecretary, *Educator Sexual Misconduct: A Synthesis of Existing Literature* (2004) (https://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf); see also generally, Professor Carol Shakeshaft, curriculum vitae https://soe.vcu.edu/media/school-of-education/pdfs/cvs/Shakeshaft-VCU-full-1_4_2018-Accessible-Ver.pdf (author of study commissioned by the U.S Department of Education).

The Bill makes a perfunctory attempt to place public and private defendants on equal footing by amending R.I. Gen. Laws § 9-1-25 and conforming the time periods to bring claims against both public and private non-perpetrator defendants. However, H 5171 neglects to address the disparity victims confront with respect to potential damage recovery. The Rhode Island Government Tort Liability Act caps damages against public entities to $100,000. See Chapter 31 of Title 9 of R.I. Gen. Laws. It is difficult to imagine why a child harmed in a public setting should have unequal access to the remedies available to a child injured in a private setting. Fairness would provide all victims with a uniform recovery potential. If there is something about the problem of child sexual abuse that justifies discarding the policies of statutes of limitations altogether, then one must ask why the institution that has the most contact with children would be treated differently than other entities.

Insurance Issues

Insurance coverage is bound to be inadequate. First, sets of assumptions about risks and verdicts in these types of claims were very different several decades ago. Many institutions that served youth did not have insurance coverage for these claims decades ago – most would not have insurance for these types of claims – if they could locate the policies at all. Second, going forward, the very long limitations period proposed in the Bill will likely cause insurance companies to decline to underwrite coverage for these types of claims.

The Diocese of Providence Has Implemented Long-Standing and Effective Policies

When the tragic reality of clergy sexual abuse reared its head and injured our community, the Diocese of Providence was among the first in the country to respond to the plague by instituting wide-ranging reforms. The history of that bygone era has been chronicled, yet recent national and international news coverage about other dioceses has overshadowed and obscured the actions, reforms and policies put in place here decades ago. We in the Diocese of Providence have a lengthy, concrete record of working tirelessly for decades to ensure that the Church is safe for children and youth; reaching out to victims of abuse and their families with resources for healing; and continuing our efforts for justice in ways that are consistent with the continued mission and pastoral works of the Church.

Reflecting our commitment to justice, the Diocese of Providence has resolved over 130 claims and paid out over $21 million in legal settlements. Additionally, a pastoral outreach program has provided victims with nearly $2.3 million for the cost of counseling in order to facilitate healing and wholeness. There have been many long-standing and effective efforts towards prevention here. In 1993, a decade before the *Boston Globe* uncovered the crisis in Massachusetts, and nearly ten years before the United States Council of Catholic Bishops adopted its Charter for the Protection of Young People, our diocese established and created its Office of

Education and Compliance ("OEC") to investigate claims and oversee safe environment polices. That office was initially led by a seasoned and experienced former Lieutenant of the Massachusetts State Police. Today, the OEC is led by a retired 23-year veteran of the Rhode Island State Police. For over 20 years, long before it was required by law, the OEC has promptly and fully reported all allegations of abuse to law enforcement – regardless of their credibility. In 2016, the Diocese expanded this reporting regimen by working voluntarily with the Department of Attorney General to do the same. These steps go well beyond the mandatory reporting requirements set forth in the Rhode Island General Laws. This was the first, and likely still today, the only, agreement of its kind in the United States.

The Diocese of Providence also established a confidential consultative review board comprised mostly of lay people to advise the Bishop on allegations of abuse. Several distinguished members of the broader community have served this board. Among others, the board's members have include a former RI Attorney General, a former Colonel and other members of the RI State Police, members of the state judiciary, the former Director of the DCYF, the former Rhode Island Child Advocate, and leaders of other religious denominations. On behalf of the Diocese, one of the State's largest employers, the OEC conducts an average of 4,000 background checks each year and administers Safe Environment Training to 3,500 people. A multitude of child protection materials are also published on the diocesan website and periodically in parish bulletins.

As an illustration of some of this work toward safety, justice and healing, attached as exhibits are published accounts by OEC's Executive Director Kevin O'Brien and Protection Board Chair, Dennis J. Roberts II. Also included is a copy of the Memorandum of Understanding Protocol with the Department of Attorney General, and a media release issued by the Rhode Island State Police describing the cooperative efforts that led to the arrest of a former clergy member.

Conclusion

Aligned against all these long-standing considerations of public policy in this case is the idea that minor victims of sexual abuse may need extra time to initiate litigation. But the law recognizes that concern already and in a number of ways. It delays the beginning of the limitations period until the minor achieves adulthood. If still more time is required for an adult to initiate litigation, the appropriate legislative response would be to extend the limitations by some reasonable period of time. But extending the limitations period to 35 years after the age of majority and stacking a discovery rule on top of multi-decades long period is not a reasoned response to this concern. Nor is the (unconstitutional) retroactive revival of ancient claims. The Bill creates more problems than solutions, and complicates the administration of justice.

Finally, whatever proposal may be enacted, it is important to recognize the degrees of culpability between those who intentionally caused harm, and those who may have committed unintentional negligence. It should also provide victims with uniform levels of recovery whether they were harmed by public or private institutions.

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Exhibits

PROVIDENCE Journal

Opinion

My Turn: Kevin O'Brien: Church in R.I. has long fought abuse

Posted Aug 25, 2018 at 3:00 PM

Let's acknowledge the irrefutable: Child abuse is insidious and arises from circumstances that repel the sympathy and understanding of all. The recent grand jury report from Pennsylvania has reopened the wound and the history of the Catholic church's role in this crisis.

However, in examining any situation, it's important to be fair and accurate. The recent and justifiable anger has clouded civil discourse and distorted local history. Any reasonable, factual examination will yield a conclusion that, while Rhode Island has experienced its own well-documented abuse crisis (widely reported in this newspaper), in the decades since that period our diocese has implemented strong and effective methods to confront the problem. In sum, Rhode Island is not Pennsylvania.

As the director of the Diocesan Office of Compliance, and a 23-year veteran of the Rhode Island State Police, I have as good a view as any of our diocese's response to this crisis.

Nearly 10 years before the U.S. Conference of Catholic Bishops' adoption, in 2002, of a formalized Charter for the Protection of Children, the Diocese of Providence was already taking steps on the crisis. In 1993, it took the unprecedented step of establishing my office, and hired a trained law enforcement investigator and former lieutenant of the Massachusetts State Police to run it.

For the past quarter-century, this office has vigorously, tenaciously and transparently conducted investigations, background checks and training to protect all within our care. Moreover, we are always improving our procedures. These efforts are not widely understood by the public because they receive scant attention.

For two decades, every allegation received by my office, regardless of credibility, has been promptly and fully reported to law enforcement. This cooperative approach allows the police complete freedom and independence to conduct an objective investigation, and to convict and punish criminals.

Independently, our Advisory Board — which has included a former Rhode Island attorney general, a former major in the state police, a former R.I. child advocate and a former director of the state Department of Children, Youth and Families — assesses cases and makes recommendations to the bishop regarding an accused person's suitability for ministry. Any allegation credibly established — regardless of when it occurred — results in permanent removal from ministry.

There is also much activity to prevent abuse. More stringent procedures have been implemented for seminarian selection. My office annually conducts over 4,000 Bureau of Criminal Investigation Checks, as well as Safe Environment Training Programs for everyone who has regular conduct with children. These are renewed every three years.

Finally, we are always looking to improve and implement best practices. In 2016, following the events at a private, non-Catholic school, we worked voluntarily with the state attorney general to establish formalized reporting protocols and more supplemental transparency, which exceeds the requirements set forth in the Rhode Island General Laws.

These policies and procedures have produced significant and positive results. But this is not to say that we are complacent with our effort, or that bad people still can't do bad things. However, significant and measurable progress has been made, as evidenced by statistics showing that the overwhelming majority of claims are from behavior many decades ago.

I spent over 20 years proudly serving as a member of the Rhode Island State Police. When I signed on as the director of the Diocesan Office of Compliance, I knew the history of the abuse crisis. Because of my work as a detective commander, I was cognizant of the dependable and trustworthy reputation established by the Office of Compliance since 1993.

In large measure, sustaining, advancing and improving its tradition was the most attractive feature of this job. Now, and in the future, we all need to strengthen our resolve to protect children. Yet we also need to push back on any narrative or notion that Rhode Island is Pennsylvania — for that ignores the tremendous efforts of many to address the ills of the past.

Kevin O'Brien is the director of compliance for the Diocese of Providence and a former major in the Rhode Island State Police.

PROVIDENCE Journal

Opinion

My Turn: Dennis J. Roberts II: Diocese has pursued justice zealously

By Dennis J. Roberts II

Posted Feb 11, 2019 at 11:00 PM

During my third term as Rhode Island's attorney general, I was presented with evidence that P. Henry Leech, then a diocesan priest, had abused teenaged boys. As a Catholic, I was incredulous. How could anyone — never mind a priest — do such a thing? The facts, however, were compelling and our office dutifully investigated and charged Leech, who was eventually convicted and incarcerated.

What I remember most vividly about the Leech matter was my interaction with the local hierarchy. Even for a seasoned prosecutor, I felt an uneasy discomfort over my upcoming meeting with Bishop Louis Gelineau. Those concerns were immediately put to rest as the bishop and his assistants were forthcoming, transparent and helpful in pursing the indictment. Our objectives aligned in favor of justice and the pursuit of truth. Our office had all the support it needed.

Later, similar cases were brought and I observed the Diocese of Providence take meaningful steps to address a burgeoning crisis. In 1993, nearly a decade before The Boston Globe's Spotlight series earned its Pulitzer Prize, the Diocese of Providence was actively establishing sound, groundbreaking practices.

A former Massachusetts state police lieutenant was hired to investigate abuse allegations, report them, and to devise protection policies for parishes and schools. Bishop Robert Mulvee established a review board to assist in assessing allegations of sexual abuse. Colonel Edmond Culhane of the Rhode Island State Police and I became original, founding members along with men and women of different faiths and expertise.

I have been the chairman of the review board since 2002. Over several decades many distinguished lay people have served this board including the former Rhode Island child advocate, the former director of the Department of Children,

Youth and Families, retired state police, members of our judiciary and leaders of other religious denominations. Any allegation credibly established by this review board — regardless of when it occurred — results in permanent removal from ministry.

Bishop Thomas Tobin has removed five priests during his episcopacy. Sustained by this important work, I have remained a member of the review board since inception.

The work of the review board, however, is not completed in a vacuum. In a practice in place for decades, every abuse allegation received — regardless of credibility — is promptly and fully reported to law enforcement so police can undertake independent investigations, make objective judgments and pursue crimes. Now, allegations are simultaneously delivered to the attorney general's office as well.

It is important to note that this transparency is voluntary. Moreover, these long-standing policies and procedures have worked. The vast majority of allegations received pertain to behavior occurring many decades ago.

Recent national and international events, however, distort — and in some instances, ignore — the crisis history and the demonstrated and effective responses of our diocese. For someone who has spent his life supporting the rule of law and enforcing it with justice for all, including the victims, it is disturbing to see the work of myself and the members of the Board and the Diocese being mischaracterized by a few.

The people of the State of Rhode Island and, for that matter, Catholics and non-Catholics together, may be assured that in the Diocese of Providence there has been a thorough, zealous and ongoing following of this problem since it was first discovered.

Fortunately, in recent years the incidences seem to have reduced. However, wherever they appear, they will be vigorously followed and dealt with.

Dennis J. Roberts II served as the Rhode Island attorney general for three terms, from 1979 to 1985.

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PRESS RELEASE

MEMBERS OF THE RHODE ISLAND STATE POLICE MAJOR CRIMES UNIT ARREST A FORMER WARWICK PRIEST FOR FIRST-DEGREE SEXUAL ASSAULT

For Immediate Release

November 21, 2014

Contact: **Captain Christopher J. Dicomitis**
Assistant Detective Commander
Rhode Island State Police Headquarters
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Colonel Steven G. O'Donnell, Superintendent of the Rhode Island State Police and Commissioner of the Department of Public Safety, announces that on Thursday, November 20, 2014, members of the Rhode Island State Police Major Crimes Unit arrested **Father Barry Meehan, age 65, of 767 Providence Street, West Warwick, Rhode Island** for First-Degree Sexual Assault. Father Meehan last served as Pastor of Saint Timothy's Church, 1799 Warwick Avenue, Warwick, Rhode Island in 2013.

Father Meehan was arraigned before The Honorable Magistrate Patricia L. Harwood in Providence County Superior Court on Five Counts of First-Degree Sexual Assault. Bail was set at $50,000 surety with no contact with the victims. Father Meehan must also surrender his passport, as well as, not leave the State of Rhode Island. A Pre-Trial Conference was scheduled for December 11, 2014 in the Providence County Superior Court, 250 Benefit Street, Providence, and Rhode Island.

During the month of December, 2012, the State Police Major Crimes Unit received a complaint from the Office of Education and Compliance for the Diocese of Providence into the alleged sexual assaults committed by Father Meehan upon several young males during the 1980's and 1990's. Detectives subsequently initiated a joint investigation with the Office of Education and Compliance for the Diocese of Providence into the allegations and developed information from the alleged victims that Father Meehan had sexually assaulted them at various locations and dates within Rhode Island. On November 20, 2014, an arrest warrant was issued for Father Meehan and he was arrested without incident at the West Warwick address.

The investigation was a collaborative effort by Detectives from the Rhode Island State Police, members of the Attorney General's Office and the Office of Education and Compliance for the Diocese of Providence, who worked to identify and locate the victims in this investigation.

This investigation is ongoing, and if anyone has any knowledge of any additional victims, please contact Rhode Island State Police Major Crimes Lieutenant Matthew Moynihan at 401-444-1046 or Corporal Kenneth Moriarty at 401-444-1280.

A person found guilty of First-Degree Sexual Assault may be sentenced to not less than ten (10) years and up to life in prison.

Colonel O'Donnell stated, "I commend these individuals for coming forward and placing their confidence and trust in the criminal justice system."

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Roman Catholic Diocese of Providence

Letter of Understanding Concerning
The Reporting of Allegations of Sexual Misconduct[1]

His Excellency, the Most Reverend Thomas J. Tobin, Bishop of Providence, and The Honorable Peter F. Kilmartin, Attorney General for the State of Rhode Island, through this joint Letter of Understanding affirm and agree:

I. It is the stated policy of the Bishop of Providence that all Diocesan Personnel adhere to the mandatory child abuse reporting requirements of Rhode Island General Laws §40-11-3.

II. The Bishop of Providence and the Attorney General agree that a standard protocol be established for the reporting and investigation of future complaints of Sexual Misconduct Perpetrated upon a Minor by Diocesan Personnel. We agree that this protocol expands upon the mandatory reporting requirements set forth in Rhode Island General Laws §40-11-3 and should serve as a model for other religious, charitable and non-profit organizations, as well as for governmental agencies such as schools, that work with and care for children. We further agree that this protocol is consistent with the long and continuing practices of the Diocese of Providence.

III. This protocol includes the following:

1. Upon receipt of an allegation of Sexual Misconduct Perpetrated upon a Minor by Diocesan Personnel or a Volunteer, the Director will determine, if reasonably possible, whether the information has already been reported to law enforcement authorities. For the purpose of this protocol, the Diocese may designate an individual or individuals who shall act on the Director's behalf to initiate contact with law enforcement.

2. If the allegation has been reported to law enforcement, the Director will ensure that the terms of this Letter of Understanding are complied with.

3. If the allegation has not been reported previously, in order to ensure that a criminal investigation, if deemed appropriate, may be initiated, the Director will promptly notify:

   (a) The Detective Commander of the Rhode Island State Police, and, if appropriate, the municipal police chief of the venue in which the alleged sexual misconduct occurred; and the Chief of the Criminal Division of the Rhode Island Department of Attorney General.

[1] Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in Appendix A hereto.

(b) The parties recognize that a victim of a crime, or a person acting on that person's behalf, may report alleged criminal conduct to any law enforcement agency having jurisdiction over the offense, and nothing in this Letter of Understanding limits which law enforcement agency shall conduct a criminal investigation.

4. Upon completion of any investigation conducted pursuant to this Letter of Understanding, the Diocese shall be promptly notified of the results of the investigation.

5. This Letter of Understanding is not intended to limit, in any way, the ability of the Diocese to report any alleged misconduct to law enforcement agencies, or to limit the nature and scope of communications between the Diocese and law enforcement agencies.

6. The Detective Commander of the Rhode Island State Police and the Chief of the Criminal Division of the Rhode Island Department of the Attorney General will maintain a log recording the reports as received. Information received in this manner may be shared by the Rhode Island State Police and/or the Attorney General with other law enforcement agencies for investigative purposes. We agree that these logs and records are criminal law enforcement records for the detection and investigation of crime within the meaning of Rhode Island General Laws §38-2-2 (4)(D).

IV. Notwithstanding the reporting protocols set forth herein, the Bishop of Providence and the Attorney General affirm that disclosure of confidential communications within the meaning and scope of the privilege recognized in Rhode Island General Laws §9-17-23 is governed by the terms of that statute, and nothing contained herein is intended to limit the privilege.

V. The Attorney General recognizes and agrees that notwithstanding the reporting of allegations of Sexual Misconduct Perpetrated upon a Minor by Diocesan Personnel pursuant to Rhode Island General Laws §40-11-3 and/or pursuant to this protocol, the Bishop of Providence, in exercising his ecclesiastical governance and authority within and for the Diocese of Providence also may review and investigate the same allegations and initiate administrative and/or penal processes pursuant to the Code of Canon Law and the other general and particular norms of the Roman Catholic Church.

VI. The parties agree that they share a deep commitment to creating a safe environment for children and youth, and that the terms of this Letter of Understanding should be liberally construed in order to achieve its goals.

VII. The parties agree that this Letter of Understanding shall remain in force unless and until either of the parties notifies the other party of its intent to terminate the agreement, which shall not occur sooner than 60 days of such notice.

This Letter of Understanding is entered into in Providence, Rhode Island this 30th day of August, 2016.

+ Thomas J. Tobin

The Most Reverend Thomas J. Tobin, D.D.

Bishop of Providence

Peter F. Kilmartin

The Honorable Peter F. Kilmartin

Attorney General

APPENDIX A

Definitions

"*Diocese of Providence*" or "*Diocese*" means collectively, each individual, charitable, educational and religious special-purpose civil corporation organized and existing to conduct the temporal affairs of the Roman Catholic Church within the Diocese of Providence.

"*Diocesan Personnel*" shall refer to priests, religious, deacons, lay persons, and contract workers employed by the Diocese who have regular contact with children through diocesan programs and activities.

"*Director*" means the Director of the diocesan Office of Compliance.

"*Minor*" is any person who has not reached the age of 18 at the time of the alleged incident.

"*Sexual Misconduct Perpetrated upon a Minor*" means conduct which, if proven, would constitute a criminal violation defined by Rhode Island law as First or Second Degree Child Molestation; First, Second or Third Degree Sexual Assaults; or an Assault with the Intent to Commit Sexual Assault.

"*Volunteer*" shall refer to any unpaid person activity who is entrusted with the care and supervision involved in a diocesan program or of children.

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